IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 335 of 1997

with

CIVIL APPLICATION No 11541 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUKHADIYA MANEKLAL VADILAL

Versus

COLLECTOR BANASKANTHA

Appearance:

1. Special Civil Application No. 335 of 1997

MR BN PATEL for Petitioner No. 1

NOTICE SERVED for Respondents No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/10/2001

ORAL JUDGEMENT

Heard Mr.B.N.Patel, learned advocate appearing on behalf of the petitioner and Mr.S.P.Sen, learned AGP appearing on behalf of the respondents.

The brief facts giving rise to the present petition are as under :-

The petitioner was granted plot No.23 of Survey No.113, City Survey No.489 of Tharad of District Banaskantha on permanent basis for business purpose by order dated 13-5-1977 which is produced at Annexure-A of this petition. Thereafter the petitioner has approached the respondent NO.2 by way of an appeal and the said appeal was allowed by the respondent No.2 on 10-12-1986 and accordingly held that the petitioner is the owner of the said shop in question. Thereafter the petitioner was advised by the office of the Deputy Collector, Tharad to make an application to the Collector asking for suitable land in exchange of his shop and also showing willingness to vacate the shop for expansion of S.T. Bus stand and application was made on 21-7-1995 which is produced at Annexure-C. Thereafter on 2nd December, 1996 the respondent No.3 Mamlatdar has illegally locked and sealed the shop belong to the petitioner and therefore, the petitioner had made a representation dated 3-12-1996 against the arbitrary action of locking the shop to the respondent No.2. Even on 6-12-1996 the petitioner made application to the Mamlatdar, Tharad requesting to allot a suitable land near Vijay cinema house in exchange of the land of his shop and further stated that he is prepared to vacate the present shop. Thereafter, the locks were open and he is allowed to use the said shop. In above set of facts and circumstance, it is apprehension of the petitioner that the petitioner would be dispossessed of the shop without any authority of law and the respondents are not likely to allot the land in exchange and therefore present petition is filed.

In the present petition, initially this Court has issued notice on 16-1-1997 and thereafter, RULE was also issued on 28-1-1997 and status quo has been granted in favour of the petitioner.

Learned advocate Mr.Patel appearing on behalf of the petitioner has submitted that the petitioner is prepared to vacate the shop provided the respondent authorities will give another suitable land in exchange

of the shop in question admittedly belongs to the ownership of the petitioner. According to the submissions of Mr.Patel, even earlier also the petitioner has already given suggestion / option for allotting the land near Vijay Cinema but despite the request of the petitioner, so far no decision has been taken by the respondent authority. Considering the submission on behalf of the petitioner, Mr.S.P.Sen, learned AGP has submitted that this Court may direct the petitioner to again make a detailed representation with more suggestion for alternative suitable accommodation and in such eventuality, the respondent authority will certainly take into consideration the representation that may be made by the petitioner and will pass appropriate orders in accordance with law.

I have considered the submissions of the learned advocate Mr.B.N.Patel on behalf of the petitioner so also of Mr.S.P.Sen, learned AGP on behalf of the respondents authorities. Considering the facts and circumstances of the case, it is directed to the petitioner to file a fresh detailed representation with more suggestions for alternative accommodation, to the respondent No.1 Collector, Banaskantha within one month from today. As and when the respondent No.1 received such representation from the petitioner, it is directed to the respondent No.1 - Collector, Banaskantha to sympathetically consider the grievance of the petitioner taking into considering the aspects that the petitioner was initially allotted the suit land for shop by order dated 13-5-1977. Moreover, by subsequent order passed by the Deputy Collector, Tharad held that the land in question in respect of the suit shop belongs to the petitioner and therefore, considering all these aspects of the matter pass appropriate orders in accordance with law within period of two months from the date of receiving such representation from the petitioner. However, it is further directed that in the mean time during the pendency of the representation, the possession of the petitioner on the suit land of the shop in question shall not be disturbed. It is also observed that it is open to the petitioner to challenge any order if adverse to the petitioner, before appropriate forum in accordance with law. It is further observed that the respondent No.1 shall communicate the decision to the petitioner by Registered Post AD.

In light of above observations and directions, present petition stands disposed of accordingly. When the main matter is disposed of, no order is required in Civil Application No.11541 / 2001 and therefore, same

stands disposed of accordingly.

Rule is discharged.

Date : 24-10-2001 [H. K. Rathod, J.]

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